IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mangilal Mali v. State of Raj. & Ors.

S.B.CIVILWRIT PETITION No.3310/2001
under Article 226 of the Constitution of India.

Date of Order : 28th March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi, for the petitioner.
Mr. Ravindra Singh for Mr.P.R.Mehta, for the respondents.
Mrs. R.R.Kanwar, Dy.Govt.Advocate.

BY THE COURT :

The petitioner while holding the post of Mohrir in Municipal Board, Pokran submitted an application dated 29.10.1999 to Executive Officer of the Municipal Board, Pokran seeking voluntary retirement from services w.e.f. 31.1.2000. The application submitted by the petitioner was accepted by the Board in its meeting dated 15.1.2000. Accordingly the petitioner was voluntarily retired from services on 31.1.2000 afternoon. After retirement from services the petitioner submitted certain representations to the competent authorities claiming pension. The

Dy.Director (Regional), Local Self Government Department, Jodhpur under a communication dated 18.1.2001 recommended the Joint Director, Pension Department, Jodhpur to allow provisional pension to the petitioner as according to Dy.Director (Regional), Local Self Government Department, Jodhpur the petitioner was then facing a criminal trial under Prevention of Corruption Act. The petitioner thereafter submitted number of representations but of no consequence. The petitioner ultimately claimed for pension by serving a notice for demand of justice upon the Executive Officer, Municipal Board, Pokran. The Municipal Board in response to notice for demand of justice dated 9.4.2001 vide a communication dated 1.5.2001 conveyed the petitioner that the pension could not be given as a criminal case was under investigation against him. It was also communicated by the Municipal Board that liability for payment of pension was upon the pension department to whom the case of the petitioner was already forwarded by the Board.

The petitioner, in these circumstances, approached this Court under Article 226 of the Constitution for redressal of his grievance with regard to payment of pension with a prayer in following terms:-

> "It is, therefore, prayed that record of the case may be called for and by an appropriate writ, order or direction the respondents may be directed to pay to

> the petitioner the provisional pension w.e.f. the date of superannuation forthwith and arrears thereof may also be paid to the petitioner without any further loss of time."

In reply to the writ petition the respondents have stated that request of the petitioner for voluntary retirement was wrongly accepted as at the relevant time a criminal case for commission of an offence under Prevention of Corruption Act was under investigation. The respondents also stated that voluntarily retirement was given to the petitioner on basis of certain wrong informations given by one Shri Ratanlal working as Upper Division Clerk in Municipal Board, Pokran.

The petitioner filed a rejoinder to the reply reiterating the averments contained in writ petition and also emphasizing that no criminal case under Prevention of Corruption Act was pending against him. The petitioner also emphasized that in fact the Municipal Board, Pokran under a communication dated 24.3.2000 refused to grant sanction for prosecuting the petitioner under Prevention of Corruption Act. The petitioner also asserted that no disciplinary proceeding was pending against him then and is also not pending against him.

I have heard counsel for the parties.

It is a position admitted between the parties that no sanction to prosecute the petitioner under Prevention of Corruption Act was granted by the Appointing Authority/the Authority empowered to dismiss the petitioner from services, as such it is wrong to say that the petitioner was facing a criminal trial at the time of retirement or subsequent to that. It is also admitted that no disciplinary proceeding was pending against the petitioner. The respondents in their reply stated that the request for voluntary retirement of the petitioner was wrongly accepted on basis of concealment of certain facts made by Shri Ratanlal, a Upper Division Clerk, working with Municipal Board, Pokran, however, it is not denied that the petitioner has already retired from services and the order of voluntarily retirement remained undisturbed. Once the petitioner was retired from services, there was no occasion to deny provisional pension to the petitioner even if he was facing disciplinary proceeding or was undergoing a criminal trial. No justification has been given by the respondents as to why provisional pension was not allowed to the petitioner. It is pertinent to note that in present writ petition the petitioner claimed only for provisional pension, however, the facts available on record establish it well that the petitioner is neither under trial for a criminal offence under Prevention of Corruption Act nor he is facing disciplinary proceeding. In view of it

there is no justification for denying pension to the petitioner.

In these circumstances, the writ petition succeeds and, therefore, the same is allowed. The respondents are directed to make payment of pension to the petitioner from the date he was retired from services. The respondents are further directed to make payment of arrears accruing in favour of the petitioner within a period of three months from today and also start regular payment of pension forthwith. The petitioner shall also be entitled for getting interest on the amount of arrears against pension at the rate of 8% per annum.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.